

Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN S. PETERSON AS
TRUSTEE ON BEHALF OF THE
BANKRUPTCY ESTATE OF
LESLEE MACDONALD,

Plaintiff,

v.

THE KROGER CO. and FRED
MEYER STORES, INC. dba
QUALITY FOOD CENTERS, INC.,

Defendants.

Case No. 08-05489 RJB

DEFENDANTS' UNOPPOSED
FED. R. CIV. P. 36(a)(3) MOTION FOR
AN ORDER DEEMING REQUESTS
FOR ADMISSION ADMITTED BY
PLAINTIFF

Noted for Consideration on April 10, 2009
NO ORAL ARGUMENT REQUESTED

I. RELIEF REQUESTED

Defendant Fred Meyer, Inc., d/b/a Quality Food Centers, Inc. ("QFC"), moves this Court for a final order stating that the Defendants' February 13, 2009, First Requests For Admission directed to plaintiff are admitted because he has not answered them. Plaintiff has not formally responded, but has indicated by e-mail that the plaintiff admits both Requests for Admission.

1 II. STATEMENT OF FACTS

2 On February 13, 2009, defendants served by mail its First Requests For
3 Admission directed to plaintiff John S. Peterson as Trustee on Behalf of the
4 Bankruptcy Estate of Leslee MacDonald. Van Dusen Decl. ¶2, Ex. A.

5 On March 19, 2009, defendants' counsel Francis L. Van Dusen, Jr. sent
6 an e-mail to plaintiff's counsel Novelle Ballard advising Ms. Ballard that the
7 defendants did not receive a response to the requests for admission by the due date
8 and they are therefore deemed admitted. Mr. Van Dusen also asked Ms. Ballard that
9 if she had any documents that would support a denial of either of the requests for
10 admission, to please produce the documents to defendants. Van Dusen Decl. ¶3.

11 On March 19, 2009, plaintiff's counsel Ms. Ballard responded by e-mail
12 that plaintiff would not deny the requests for admission. Van Dusen Decl. ¶4, Ex. C.
13 "I have no medical documents to deny your admissions." Van Dusen Decl. Ex. C.

14 III. STATEMENT OF ISSUES

15 Should the Court issue an order deeming the Defendants' First Requests
16 For Admission directed to plaintiff admitted under Fed. R. Civ. P 36(a)(3) due to
17 plaintiff's failure to respond to the discovery request?

18 IV. EVIDENCE RELIED UPON

19 This motion is based on Fed. R. Civ. P. 36, the Declaration of Francis L.
20 Van Dusen, Jr., and attached exhibits, and the pleadings and files herein.

21 V. AUTHORITY

22 Fed. R. Civ. P. 36 (a)(3) states:

23
24 *Time to Respond; Effect of Not Responding.* A matter is
25 admitted unless, within 30 days after being serviced, the
26 party to whom the request is directed serves on the
requesting party a written answer or objection addressed
to the amttter and signed by the party or its attorney.

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VI. CONCLUSION

Defendants respectfully request that its proposed order be entered.

DATED this 20th day of March, 2009.

MILLER NASH LLP

/s/ Francis L. Van Dusen, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2009, I electronically filed the
DEFENDANTS' UNOPPOSED FED. R. CIV. P. 36(a)(3) MOTION FOR AN
ORDER DEEMING REQUESTS FOR ADMISSION ADMITTED BY
PLAINTIFF with the Clerk of the Court using the CM/ECF system which will
send notification of such filing to:

Novelle Ballard – nballard@mls-law.com

/s/ Francis L. Van Dusen, Jr.
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